thur Andersen LLP v. *United States*, No. 04-368 (May 31, 2005) (slip op.).

Finally, the government notes that the documents in question were voluminous. That is correct, but irrelevant. Petitioner's argument is not that the government was required to search the Florida warehouse to uncover exculpatory materials, but instead that it could not mislead petitioner into believing it had done so. Thus, the government quotes the district court's statement that "[n]o one but [petitioner] could comprehend [the body of documents] in its entirety" (BIO 3), apparently to create the misimpression that petitioner should have known about the particular exculpatory documents now in question. But the district court, of course, found precisely the opposite: "Defendant was in jail and obviously could not have made his own examination; it would be *fanciful* to expect that he would remember in detail the contents of an enormous body of documents assembled in a warehouse." Pet. App. 60a (emphasis added).

CONCLUSION

For the foregoing reasons, as well as those set forth in the petition for a writ of certiorari, certiorari should be granted.

Respectfully submitted,

Lawrence S. Lustberg
Thomas R. Valen
GIBBONS, DEL DEO, DOLAN GRIFFINGER & VECCHIONE
One Riverfront Plaza
Newark, NJ 07102

Thomas C. Goldstein
(*Counsel of Record*)
Amy Howe
Kevin K. Russell
GOLDSTEIN & HOWE, P.C.
4607 Asbury Place, N.W.
Washington, DC 20016
(202) 237-7543

December 29, 2005